

True Patriot Vindicated,

H. Hyde (L.) Earl O.R. of Rochester.

A Justification of his Excellency, The EARL of ROCHESTER, LORD LIEUTENANT of IRELAND,

515. L. 8. From several False and Scandalous Reports.

14

The First Part.

SUCH is the Fate of all Great Men that they must expect Detractors. If any Man might pretend to an Exemption, the Person whose Apology I am writing, is the likeliest. His great Merits to the King, from his coming over, and those so justly rewarded with such high Favours: Governing one Kingdom in Person, another by his Pupil, and the Principal of the three by his Counsel: Well supported by his Party, and above all happy in his Temper and Discretion. And yet this Man cannot escape without Enemies, and malicious Stories are scattered abroad to lessen his high Character.

I shall not think it worth while to rake together every spiteful and Impertinent Tale, whispered concerning him, but leave them to perish in Obscurity with their Authors. I shall confine my self to those Objections which seem to leave the greatest Impression on Mens Minds to his Disadvantage. And if I can wholly justify him, or at least render him very excusable as to every one of those, other things will fall of Course, and honest Men will be no longer seduced to doubt his being that true Patriot which his Friends publish him to be.

The first Objection then which is made to him, and which seems most directly to contradict this Character of him, is that when he was Lord Treasurer to King James, he issued out Orders, and caused to be levied the Duties of Tonnage and Poundage and other Customs, for several Months after the Death of King Charles, without any Warrant or Authority of Law. This Charge is very maliciously aggravated. 'Tis said to be directly contrary to the famous Statute *de Tallagio non Concedendo*, and about 20 other ancient Laws: To be a direct Violation of the *Petition of Right* in the third Year of King Charles the First: To be a much higher thing than the *levying of Ship-Money*, and the less excusable because it came after that was solemnly condemn'd. You see how Envy can improve things. It will not be allow'd that such Actions can consist with the Character of a Patriot. It is said this was of all others the most Fatal Stroke to Our Constitution, and is totally inconsistent with Property and Parliaments.

As specious as this Charge appears, I hope to vindicate this Noble Earl from it, or which is all one, to shew that there are Men in the World, who are Obliged, and are (above all others) able to do it.

It is undoubtedly a Question of Law, whether the Customs may be levied without consent of Parliament; and who but Lawyers are fit to judge of that Question? I appeal to every man, if amongst all who call themselves by the Name of Lawyers, there can be found two Persons who pretend to be more nice in discerning what is agreeable to the English Constitution, and more Zealous in maintaining it, than Sir Bartholomew Shower, and Sir Humphry Mackworth. Are there two men whose Opinions, even in Mens Thoughts at this time, the Noble Earl could more safely follow than theirs? If then I can shew that in the Opinion of these two Learned Persons, the Collection of the Customs in that case was not only lawful, but a gracious Act in King James, founded upon as good Right as *Magna Charta*, and much more Ancient, and that all who were against it were Enemies to the Peace and Welfare of the Kingdom.

I hope I have made a good Step toward the Justification of the Noble Earl. To do this I shall not produce an Opinion given in private, but openly in the face of the Kingdom, presented to King James, and publish'd in the *London Gazette*, N°. 2015. In the Article from *Whitehall*, March 7. 1684. it is said, The following Address from the *Middle Temple* was presented by Sir Humphry Mackworth, accompanied with a great many Barristers and Students, being introduced by His Grace the Duke of Beaufort.

Most Dread Sovereign,

We Your Majesty's most Dutiful and Loyal Subjects, with all Humility congratulate the legal and peaceable Descent of this Imperial Crown upon Your Majesty, the only Remedy for our unspeakable Sorrow for the Death of our late most Gracious Sovereign of ever Glorious and blessed Memory.

Your Majesty's unparalleled Justice, Courage and Conduct (signalized to the World before they became Ornaments to the Crown) give a perfect Assurance of Happiness to these Nations under your Government. We cannot therefore but with the deepest sense of Gratitude acknowledge your Majesty's Great Goodness and Condescension in your late Declaration, and in particular, That your Majesty hath been graciously pleased in pursuance of the same to extend your Royal care of the Government to the Preservation of the Customs, the Intermission whereof would not only have disabled your Majesty to maintain the Navy in defence of the Realm, but by taking away the Ballance of Trade, have ruined Thousands of your Majesty's Subjects that paid Custom in the life of our late Sovereign, and by an excessive Exportation and Importation Custom free, have rendered that Branch of the Revenue unprofitable for some Years to come, notwithstanding all the Care and Loyalty of the succeeding Parliament. For which reasons the same have been continually received by your Majesty's Royal Predecessors for some hundreds of Years, and never questioned by any Parliament, unless in that wherein were sown the Seeds of Rebellion against the Glorious Majesty your Royal Father of ever blessed Memory.

'Tis a received Maxim of the Common Law, *Thesaurus Regis est Vinculum Pacis & Bellorum Nervi*; such is the happy Constitution of this Monarchy, That your Majesty's High Prerogative is the greatest security of the Liberty & Property

of the Subject, so that whoever would impair the Revenue of the Crown, must by this Fundamental Law (as binding as *Magna Charta*, and more Ancient) be esteemed an Enemy to the Peace and Welfare of this Kingdom.

We therefore think it our indispensable Duty to endeavour the Choice of such Representatives for the respective Counties and Boroughs to which we belong, as may not only concur in settling a Revenue to support the Government as formerly, but also shew a grateful sense of the great things you have done and suffered for us already, an entire Confidence in Your Majesties Goodness towards Us for the future, and a cheerful Compliance with your Heroick Inclinations to advance the Honour and Interest of these Nations. May there be never wanting Millions as Loyal as we are to sacrifice their Lives and Fortunes in defence of your Sacred Person and Prerogative in its full Extent, and incessantly pray the King of Kings to grant to Your Majesty a long and happy Reign over us.

It may be pretended, that tho it be certain that Sir Humphry Mackworth presented this Address, yet nothing more can be certainly collected from the Gazette. To this I say, that if there were any danger of these Gentlemen's Receding (which I can never suspect in Men of their Virtue and Publick Zeal) the Original Address happens to be extant, and may be resorted to, where both their Hands appear; and there are Men of great Quality alive who can prove that Sir Barth. did not only bear Sir Humphry Company at the presenting of it, but put a just Value upon himself, as being the happy Penman of so significant a Compliment to King James. It must be confess'd I did hope to have strengthened my Argument from the weight of some other Names to that Paper, but I find them upon perusal to be so very obscure and unknown (tho it be called an Unanimous Address) that I do not pretend to draw any great Consequences from them to make good my Defence of the Earl. But I want them not, these two Names are worth hundreds, they are forthcoming, are at the head of the Management; and whenever they shall be called upon, will be ready (as Men of Honour ought to be) to make good their Positions, and to shew that they were not time-servers, and did not mislead the Noble Earl.

I have been considering what Malice can say against this Argument, (for Malice I expect should say all it can upon the Occasion.) Suppose then it should be said, (as it has been) that Sir Humphry Mackworth was a younger Brother without any Fortune, or Name in his Profession; that it is true, he had been Knighted, but it was for Revelling, not Law, and that probably this is the only Opinion he was ask'd to give either before or since.

To this I shall reply, that if Scurrility may pass for Argument, every Body may be run down. I shall use two Instances only to shew him to be a great Man in himself, let the World judge as they please. His Notable Management of the Mine Adventure, which if well considered, is a convincing Proof of his Truth and Honesty; and his Vindication of the Rights of the Commons of England, is no less a proof of his Modesty in Undertaking, his Candour in true repeating matter of fact, and his Judgment in managing that Controversy.

But suppose Sir Humphry's Opinion alone might not have had weight enough to have warranted an Action of so great Consequence, yet when Sir Barth. gives a sanction to it, what room is left for doubt? What he maintains passes for Law immediately, whatever Opinion People had of it before. Was there ever a Proceeding more decried and detested than that against the Lord Russell? but as soon as ever Sir Barth. Shower undertook to justify that whole Matter, in a Pamphlet which he called the *Magistracy and Government of England Vindicated*, has not every body been satisfied that my Lord Russell was tried fairly, and suffered justly, and that the King and Parliament were in the wrong in reverting the Attainder? So I doubt not, tho it may appear a Paradox to say, that the King may levy Taxes without Parliament, yet when Sir Barth. is heard to that Point, all men will readily acquiesce in it.

But some may think I run on too fast, and presume more than I ought on the present Opinion of that eminent Lawyer. I have been told, he has chang'd his mind more than once in a much less time. In his Preface to his Reports of Cases adjudged in the House of Lords, he spoke of their Jurisdiction as the noblest and most necessary part of the English Constitution, and in a few Months time he treated it in a Speech publicly in the *Middle Temple Hall*, as a downright Usurpation. It has been also told me, when I was thought to lay too much stress upon his Support, that he got but oddly off when he was charged with another very solemn Opinion of his, by which the poor Soldiers suffer'd Death for deserting in King James's time, which some call Murder, and setting up Martial Law in time of Peace, (a thing very Abhorrent from the English Constitution.) But he did not think it proper or seasonable to justify either his Law or his Honesty upon the Occasion, contenting himself with saying, he was not above 29 Years old when he did it, and had his Fortunes to make.

For my part I think those who call to mind loose sayings of this sort, have very Ungentlemen-like Memories. I take this learned Knight to have too great tenderness and regard to the Noble Earl to desert him in so weighty a matter. He will consider that such sort of Excuses will not serve above once: It may be easy to get off when only a few poor Common Soldiers, who have been long dead and buried, are in the case; but it will not be so when the contest is with as many Statutes, that have many of them liv'd long, and 'tis to be hop'd they are pretty healthful still, and

14
and likely to last much longer. No, I have no doubt but whenever he shall be call'd upon he will be ready to make good the Law of his Address, and therefore I shall look upon the Noble Earl as fully justified in this Point.

A second thing objected to this Noble Earl is, his sitting and sitting in the High Commission Court, which is pretended to be directly against One express Act of Parliament, tho' not against so many as the former Charge.

I ought to be very cautious of what I say in relation to this Point, because the issuing and causing to be executed a Commission under the Great Seal for erecting a Court call'd The Court of Commissioners for Ecclesiastical Causes, was one of the Charges against the late King. But I have been assured by very considerable Persons, that in a Debate not long since touching the Deprivation of a Simoniack Bishop, some Noble L——s made a large advance towards shewing the Necessity of such Commission, and would not allow but that there must be a failure of Justice without it.

But supposing that in all the Rigor of Law, as things now stand, this matter cannot be entirely maintain'd: Yet if I can prove the Noble Earl went herein upon as sure Grounds as may justify the Action of a prudent Man in any other case, he ought not to be censured with Severity.

The Objections against this Commission are, that it was erected against Law, that it was intended for the ruin of the Church of England, and that it was carried on to the establishing of Popery in the Universities.

As to all these matters, I think the Noble Earl has as much to say for himself as can reasonably be expected from any Man. As to the first, this was a Commission for Ecclesiastical Causes, and who shall judge of it but Ecclesiastical Lawyers? No Man will set himself upon an equal foot for Knowledge of this kind with the Right Honourable Sir Charles Hedges, his Majesties Principal Secretary of State, and Judge of the High Court of Admiralty. Was not he Advocate to that Commission? and was it not by his Advice they acted? Nothing surely which they did was more objectable than their Proceedings against Magdalen Colledge. And was it not upon him that the Weight of that Expedition lay? I suppose no body will affirm that the Ecclesiastical Commissioners, as to the Law part at that time, did much rely on the then Bp of Chester, or Lord Chief Justice Wright, or Baron Jenner. The Letter published in the printed Relation of those Proceedings, written by the Fellows of that Colledge, dated the 20 of October 1687. and directed to this Honourable Person, says they were glad of his being employed, because of his Learning and Integrity. When an Enemy makes such a Confession, had not this Noble Earl ground enough to depend upon the Legality of a Commission, where such a Man so frankly took so great a share?

Secondly, As the Noble Earl might well think himself safe in point of Law from what has been said, so most assuredly he could not think the Church could receive any Detriment from that Commission while he had the Right Reverend Father in God the Lord Bp of Rochester sitting by his side. I take him to be the steady Support of the Church even at this day. 'Tis he that protects the Inferiour Clergy from Oppression. 'Tis at the Deanery of W—— that all the secret Councils of the Church are held: And therefore the Noble Earl might upon good Grounds think himself secure as to hurting the Church while he kept such Company.

I expect to have it objected to me that the Bishop has renounced this Commission in his printed Letter to my Lord Dorset, which he owns to be written only for a Mitigation of his Offence, and not to justify his sitting in that Court. I acknowledg this to be true, but this Letter was wrote after the Revolution, after all the Mischief over, and after this Court was no more. So let the B—— in his Humility take what shame he pleases to himself, I still insist upon it, that his Example might very well mislead the Noble Earl.

Thirdly, The Noble Earl could never entertain a suspicion that this Commission could be to the prejudice of the Universities, and least of all to the introducing of Popery there, while the M—— of N—— made one of the Number of Commissioners, which he did to the very last: His Love to Learning is known by his liberality to Dedicators: his Skill in the Latin Language appear'd eminently in his reading two Commissions lately at a Conference, and could he be engaged in a business which might prejudice the Universities? As to Popery, the Noble Earl I dare say never heard him suspected of the least Bias to that or any thing of that kind, and therefore he could fear nothing from a Commission where he had a Companion so free from Superstition, from self-Love, from Pride, ill Nature, and as known an Enemy to France as is upon record to this Day.

I expect to be hit in the Teeth with his Confession and Retraction written to Dr. Tillotson, and his devout kneeling at the Elevation on every Solemn Day in the P—— Chappel.

To the first of these the Answer is the same as before, this Letter came not out till King James was gone. And to the Second I hope that is no great Reflection, why might not his L——p take the same liberty with another great Courtier, old Naaman the Syrian, who found it necessary to bow himself with his Master in the House of Rimmon? But I do not see how this concerns the noble Earl, whose Apology I am Writing, and who surely if he did a little err, deserves great Indulgence from every reasonable man upon the Account of his having err'd in such Company.

The Third thing which the Enemies of this Noble Earl endeavour to spread abroad to his prejudice, is, (what did provoke me above all other things, because it seem'd to touch him as to his Justice and Integrity, for which he does so truly deserve to be honoured) I mean the cutting of Three Leaves out of a Book, containing the Accounts of the Hearth-Mony, during his Administration of the Treasury in the Reign of King Charles

the Second, together with other scandalous Circumstances relating to that Affair.

But it pleases me infinitely to think I have the clearest Answer to give to this unworthy Surmise, (for it is no more) which can possibly be imagin'd. No Man doubts of the Noble Earl's Wisdom and Foresight, and therefore it is impossible for any Man to conceive that, if he had been conscious of any indirect Practice in that Matter, he would not have made use of his Power (which all will agree was very great after the time when this was supposed to be done) to have dammed all Possibility of a future Enquiry. But on the contrary, which I urge as a Demonstration of his Innocence, this whole Account is open at this very day. And if any of the Enemies of this Noble Earl have a mind to examine into it, they may do it as soon as they please; and I dare say he boldly challenges them to do it. I have heard it said in Discourse by his Maligners, that he may be so bold now, because Sir Patrick Traut, Mr. Kingdon and Mr. Shales are dead, and that this Challenge was never heard of before. To this I say, tho' there be no end of venomous and malicious Insinuations, yet I think it an Answer, that there are two worthy Gentlemen still alive, and of great Reputation for Integrity, who know the whole Truth of this matter; I mean Anthony Row Esq; and William Bridges Esq; and if it should be thought it to have them thoroughly examined, I do not in the least doubt but it will tend to the Honour of this Noble Earl, who is ready to abide the severest Scrutiny.

The Fourth thing which is frequently objected to this Noble Earl, surely the most foul and worst grounded of all Slanders, as if there had bin times when he was not thought a very Resolute and Zealous Protestant. But I shall easily vindicate him.

There are two things urged as the Grounds for this Scandal. The First a Speech which it is pretended this Lord made many years since, when he was Ambassador to the King of Poland, wherein there are Passages which shew him to have bin at that time in the Secret for Advancing Popery and France, and for ruining the Liberties of England, and the Republick of Holland. Why may it not reasonably be believ'd that the Speech which is handed about is an Imposture? It is certain that John Sobiesky King of Poland was a stranger to the English Language, and therefore this is not the true Discourse pronounc'd before him, and possibly it may be very unlike it. To convince the World that there is a Protection often found for Worth and Vertue, when it is least expected: Tho' this hapned many years ago, yet there is a Reverend Divine, and an unsuspected Son of the Church of England, Dr. Robert South, still living. He waited upon the Noble Earl in that Embassy: He put this very Speech for him in Latin, in which Tongue the Earl delivered it, and the World will very suddenly see the Authentick Paper published by that Learned Person, which will doubtless be a full Vindication of his most honoured Lord in Patron.

The Second Occasion taken for propagating this Slander, will I hope appear very frivolous as it is mentioned. It is that this Noble Earl, King James's Reign was so little fix'd and resolv'd in his Religion, that he yielded to be instructed, and was content to admit of a Dispute between some Priests of the Church of Rome and some Divines of our Church, in his Presence, and that after it was over he remained so far in suspense, not to declare which Side had the better.

Supposing this Fact to be true (which the Divines who were concern'd in the Dispute may perhaps satisfy the World to be quite otherwise) I do not see what great weight can be laid on it. No man can be too well inform'd. He might be thought obstinate and unmannerly to his Master, he had refused the Conference: Nor ought his Silence to be objected to him as a Fault, every one knows how extremely well bred the Noble Earl was, and peradventure he might think it rude to put the Priests out of Countenance. Perchance he thought it Wisdom at that time to keep his mind himself: We all know how great a Master of Taciturnity he is. To leave this kind of Reasoning, and to put all these unjust Suspensions to an end for ever, I will give you the Character of this Noble Earl from one who knows him well, his own Chaplain Dr. Hickman, whose word every body will depend on. In his Dedication of his Printed Sermons to the Noble Earl, he tells him that he asserted the Cause of the Established Church in the worst of Times, and had given the World a Glorious Example both of Patriot and Confessor. It is sure he cannot mean since the Revolution: a temper so unbiass'd and disinterested a Character, I shall add no more, and hope every one will say it is enough.

I will take notice only of one more Objection made to this Noble Earl, which I think will need little Answer. It is said, He oppos'd the putting the Crown on the Kings Head, would not have had him acknowledge the Rightful King, protest'd against the Bill of Recognition, and was violent against the Association, and acted the like part in most other things of that nature. Without enquiring how far these things are true, I take it to have a very Seditious Tendency. It is more a Reflection on the King than the Noble Lord: It is to insinuate as if the King acted by Humour rather than Judgment, when he chuses Ministers so oddly; nay it is to question his Wisdom: For most certainly, if Opposing and Obstruding be the way to Greatness, there never will be wanting Candidates enough that sort for his Majesty's Favour. I conclude therefore, that either these things are false, or else that the Noble Earl has found out some way to make more than enough Amends to his Majesty for all that is past.

I shall conclude at present, till I know how my poor Endeavours are accepted, where I offer them with great Humility; if this succeed, I shall soon publish a second Part of the Apology, if otherwise, I have done as much already.